



WYOMING LEGISLATIVE SERVICE OFFICE

Memorandum

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TO Joint Agriculture, State and Public Lands and Water Resources Interim Committee

FROM Luke Plumb, Staff Attorney

SUBJECT Topic Summary: Wyoming Fence Laws

This summary provides an overview of the statutory provisions related to fences and cattle guards, including what constitutes a legal fence in Wyoming, and a brief discussion of 2019 House Bill 51.

Wyoming Statutory Provisions

The statutory requirements for fences and cattle guards are contained in title 11, chapter 28 of Wyoming Statutes.¹ Within these statutory provisions, there are two important definitions in terms of fencing, who is considered the owner of a fence and what constitutes a lawful fence.²

Fence Owners and Lawful Fences Defined, Liability and Penalties for Unlawful Wire Fences

A person who occupies, uses, enjoys, maintains, or has the charge of an enclosure is considered to be the owner of the fence in question.³ A person considered to be the owner of a fence is the responsible party for any action that is commenced under the statutory provisions for fences and cattle guards.⁴

There are three distinct types of lawful fences, and statute provides that any other type of fence may be considered lawful if it meets criteria to protect enclosures or resist breaching by stock animals.⁵ The first distinct type of lawful fence includes barbed wire in its construction.⁶ For this first type of fence to be lawful, it must be constructed using steel, concrete or wooden posts and

¹ See W.S. 11-28-101 through 11-28-108.

² See W.S. 11-28-101 and 11-28-102.

³ W.S. 11-28-101.

⁴ *Id.*

⁵ W.S. 11-28-102(a)(i)-(iii), (b).

⁶ W.S. 11-28-102(a)(i).

either three or two spans of barbed wire.⁷ A lawful fence that uses three spans of barbed wire must have the wire spaced out between ten and fifteen inches apart.⁸ A lawful fence that uses two spans of barbed wire must have a wooden rail on top.⁹ The fence must be constructed with posts that are set at least twenty inches into the ground, and any wooden posts used must be at least four inches in diameter.¹⁰ The fence posts can be set no further than twenty-two feet apart, except the posts may be set at a maximum of thirty-three feet apart if iron or wooden stays are set between the posts.¹¹ Those stays that are set between fence posts must be placed equidistant between the posts.¹²

The second distinct type of lawful fence is a post and board fence is constructed either with three or four boards between posts and securely fastened with nails or something similar.¹³ The specific requirements are that the posts must be at least four inches in diameter and set substantially into the ground.¹⁴ For a three board fence, the boards used must be sold as one inch by eight inches wide lumber and the boards must be set apart no more than ten inches.¹⁵ For a four board fence, the boards used must be sold as one inch by six inch wide lumber and the boards must be set apart no more than eight inches.¹⁶

The final distinct type of lawful fence is a pole fence that uses round poles that are no less than two inches in diameter at the small end.¹⁷ The posts for this type of fence can be either upright or leaning but they must be spaced no more than sixteen feet apart.¹⁸ The poles must be securely fastened with nails, wire, or something similar.¹⁹

Wyoming law allows for any other fence that is constructed using various materials such as boards, rails, poles, stones, hedge plants or any other material to be considered a lawful fence under certain conditions.²⁰ For the fence to be considered lawful, it must be “declared as strong and well calculated to protect enclosures” or be able to resist a breach by stock animals in the same manner as the three specific types of lawful fences as previously discussed.²¹ A lawful fence that encloses any hay corral that is set outside of a field or pasture has additional

⁷ W.S. 11-28-102(a)(i).

⁸ *Id.*

⁹ *Id.* Note: statute requires that the barbed wire be spaced ten to fifteen inches apart for a three span fence but does not necessarily give a distance for a two span fence. For a two span fence, the only direct requirement is that there is wooden rail on top of the fence.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ W.S. 11-28-102(a)(ii).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ W.S. 11-28-102(a)(iii).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ W.S. 11-28-102(b).

²¹ *Id.*

requirements.²² That fence must be constructed of boards, poles or wire and be at least six feet tall.²³ The posts for the fence enclosing the hay corral must be set at least twenty-four inches into the ground and set no more than eight feet apart.²⁴ If the fence for a hay corral is constructed using barbed wire, there must be at least seven spans of barbed wire that are kept properly stretched.²⁵ Any fence to enclose a hay corral that is considered to be “better” than the statutory requirements will also be considered a lawful fence.²⁶

A person that constructs or maintains an unlawful **wire** fence that does not meet statutory requirements, that person is liable in a civil action for all damages to animals that are the result of the unlawful wire fence.²⁷ The owner of an unlawful wire fence is guilty of a misdemeanor and may be fined \$5.00 to \$25.00.²⁸ The fine increases to \$25.00 to \$100.00 for each subsequent offense.²⁹ In addition to any fines that are imposed, the owner of an unlawful wire fence is required to rebuild the wire fence to meet the standards for a lawful fence within thirty days of conviction.³⁰ Any owner of an unlawful wire fence who does not or refuses to rebuild the fence to meet lawful fence standards within those thirty days is guilty of a separate offense.³¹ Upon conviction for the separate offense for maintaining the unlawful wire fence, the owner may be fined as discussed above.³² Every thirty days that the unlawful wire fence is not remediated will result in a separate offense and like punishment.³³

General Fence Provisions

Fences that are constructed across a public road or a road that leads to a watering place must, at the point where the fence crosses the road, be constructed of boards or poles that extend no less than eight feet on each side of the middle of the road.³⁴ Any person who violates this requirement is guilty of a misdemeanor and subject to the same penalties as is prescribed for an unlawful wire fence.³⁵

A board of county commissioners may authorize lawful fences to be constructed on the right-of-way of any public road.³⁶ The cost of the fence may be placed on the petitioner for the establishment of the road, may be agreed to by the petitioner and board of county commissioners, may be placed on the owners of lands that would benefit from the fence, or may

²² W.S. 11-28-102(c).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ W.S. 11-28-103(a) (emphasis added).

²⁸ *Id.*

²⁹ *Id.*

³⁰ W.S. 11-28-103(b).

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ W.S. 11-28-104.

³⁵ *Id.*

³⁶ W.S. 11-28-105.

be paid for by the county, which is to be determined by the board of county commissioners.³⁷ The board of county commissioners is required to locate and construct gates and cattle guards as it deems necessary for the convenience of the public.³⁸ The cattle guards that are installed must meet the specifications of the state highway department, and the expense shall be that of the petitioner, benefitting landowner, or the county at the board of county commissioner's determination.³⁹

The owner of a lawful fence that was constructed as or does become a partition fence between the owner's land and the land of another person may require the other person to pay half of the costs of the fence.⁴⁰ The costs that must be paid by the other landowner may be the actual cost or what the cost would be to construct the fence.⁴¹ If the other landowner refuses to pay half of the fence cost, the owner of the fence may bring a civil action against the other landowner to recover half of the fence costs and the costs of the suit.⁴² The joint users of a partition fence must share the maintenance costs of the fence for their respective uses.⁴³ Any refusal by either party to share in the costs for maintenance may similarly be recovered by civil action.⁴⁴

When land is being developed for a subdivision, the subdivider is required to and shall be responsible for the construction of a perimeter partition fence between the subdivision and any adjacent land where "livestock can be legally run at large."⁴⁵ The costs of the perimeter partition fence must be shared in the same manner as described in the preceding paragraph. However, the adjacent landowner cannot be held liable for any damage to the subdivided land that results from livestock pastured on the adjacent land.⁴⁶

Wyoming statutes prohibit any person willfully or negligently leaving open, breaking down or destroying any bars or gates that are for the use of the public or any manner of destruction of a lawful fence.⁴⁷ Any person who is found to have done so is guilty of a misdemeanor and faces penalties of up to a \$100 fine or imprisonment of three months or both.⁴⁸

Fence Out Requirement and Liability

Any person who owns or has in their possession livestock that breaches into the lawful enclosure of another person is liable to the injured party for any damages that occurred as a result of the

³⁷ W.S. 11-28-105.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ W.S. 11-28-106(a).

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ W.S. 11-28-106(b).

⁴⁶ *Id.*

⁴⁷ W.S. 11-28-107.

⁴⁸ *Id.*

breach.⁴⁹ Damages resulting from the breach may be recovered in a civil action either before a court having jurisdiction or through arbitration.⁵⁰ In the event of arbitration, each party to the civil action shall choose a property holder to serve as an arbiter, and the two selected arbiters will choose a third.⁵¹ The three arbiters shall be sworn by a judge of the circuit court before beginning their duties, which include examination of the fence, assessment of damage done, examination of witnesses under oath, which shall be administered by one of the arbiters, and creation of a written report of findings to be signed by at least two arbiters and submitted to the circuit court in the county where the damage occurred.⁵² The arbiters' report shall be filed with a judge of circuit court in the county where the damage occurred within three days after the findings were rendered.⁵³ Once filed, the circuit court judge is required to enter the case upon their docket and proceed to execute the case as if it were originally brought before that judge.⁵⁴

In situations where livestock breaches the lawful enclosure of another person, the person who sustained the injury is required to notify the owner of the livestock about the damage and the probable amount of the damage if the injured person knows who the animals belong to, and if the owner of the animals resides within the county where the damage occurred.⁵⁵ The injured person may keep as many of the animals that caused the damage in custody, equal to the amount of damages incurred.⁵⁶ The injured party may maintain those animals in custody during the course of the civil action or arbitration unless the amount of money required to cover the damage to the injured person's fence and the cost of caring for the animals is tendered to him.⁵⁷

If the civil action that is commenced for damage to a lawful enclosure proceeds to trial and the damaged enclosure is determined to be a lawful fence, the plaintiff (who sustained proven damage to their fence) is awarded the costs of damage to the fence and costs of keeping any of the offending animals in custody.⁵⁸ Any judgment for damages and costs that is entered in favor of the plaintiff will result in a lien against the animals causing the damage.⁵⁹ If it is found at trial that the plaintiff's enclosure was not a legal fence or if it is found that no damage was sustained, then judgement will be entered against the plaintiff to include any costs for the suit and damages sustained by the defendant.⁶⁰ Additionally, if at trial it is found that the defendant is not the owner or in charge of the animals that caused the damage, then that defendant will be discharged from the action with his costs.⁶¹ If the defendant is discharged, the case can proceed against an unknown defendant.⁶² Similarly, the plaintiff who suffered injury can bring a civil action against

⁴⁹ W.S. 11-28-108(a).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ W.S. 11-28-108(b).

⁵⁶ W.S. 11-28-108(c).

⁵⁷ *Id.*

⁵⁸ W.S. 11-28-108(d).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ W.S. 11-28-108(e).

⁶² *Id.*

a defendant unknown if the plaintiff does not know who owns or keeps the animals causing the damage.⁶³

2019 House Bill 51: Lawful fence standards-county preemption

In 2019, the Joint Agriculture Interim Committee sponsored House Bill 51 (HB 51) that would have created a new statutory provision relating to fences and cattle guards.⁶⁴ This bill prohibited counties from adopting any ordinance, bylaw or regulation regarding lawful fence requirements and standards that would conflict with the statutory provisions outlined in this paper.⁶⁵ The bill established the provisions of the fences and cattle guards chapter as exclusive, and any county ordinance, bylaw or regulation would be void.⁶⁶ Therefore, a county would not be allowed to require any person to modify a fence that meets the requirements of a lawful fence in statute.⁶⁷ This bill failed committee of the whole in the house.⁶⁸

This summary provides an overview of the statutory provisions related to fences and cattle guards, including what constitutes a legal fence in Wyoming, and a brief discussion of 2019 House Bill 51.

⁶³ *Id.*

⁶⁴ See 2019 HB 51, available [here](#) (last visited August 8, 2022). Note: this bill is substantially similar to 2018 SF 107, available [here](#) (last visited August 8, 2022).

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ See the digest entries for this bill at the Wyoming Legislative Website, available [here](#) (last visited August 8, 2022).